IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH POUSHA 1928

WP(C).No. 15050 of 2006(N)

AGAINST THE ORDER IN IA 5234/2005 IN
OS.65/2005 of II ADDL.SUB COURT,KOZHIKODE

.....

PETITIONER:

KRISHNA JANAKI, AGED 74 YEARS,
W/O. LATE KAPPANA MURALEEDHARA MENON, 7S-1,
CHINTHA VALAPPU FLATS, RAM MOHAN ROAD,
KASABA AMSOM, DESOM, KOZHIKODE TALUK.

BY ADV. SRI.T.K.VIPINDAS
SMT.P.K.PRIYA
SRI.K.V.SREE VINAYAKAN

RESPONDENTS:

---

1. K. VISHALAKSHY, AGED 75 YEARS,
ARAYADATHU UNNI NAIR, RESIDING AT KEEZHEDATH,
PARAYANCHERI DESOM, KOTTOOLI AMSOM,KOZHIKODE TALUK

2. K.J.MARY, AGED 65 YEARS,
D/O. JOSEPH, RESIDING AT TALANANY,
PARAYANCHERY DESOM, KOTTOOLI AMSOM,KOZHIKODE TALUK

3. KAPPANA RUGMINI AMMA @ KOCHU RUGMINI @
RUGMINI DEVI MENON, AGED 76 YEARS,
D/O. K.SANJEEVA MENON, ANARGHA NIVAS,
KALATHIN KUNNU AMSOM, DESOM, KOZHIKODE TALUK.

4. KAPPANA JYOTHIKUMAR,
S/O. KAPPANA RUGMINI AMMA, AGED 51 YEARS,
ANARGHA NIVAS, KALATHIN KUNNU AMSOM, DESOM,
KOZHIKODE TALUK.

5. KAPPAN SHAILAJA PREM,
S/O. KAPPANA RUGMINI AMMA, AGED 47 YEARS,
ANARGHA NIVAS, KALATHIN KUNNU AMSOM, DESOM,
KOZHIKODE TALUK.

6. THULASEEBHAI, AGED 42 YEARS,
D/O. BALAGOPAL, VALIYEDATH VEETTIL,
PANNIYANKARA AMSOM, DESOM, KOZHIKODE TALUK.

7. PRIYAMVADAN, AGED 42 YEARS,
S/O. CHATHUKUTTY, JANAKI NIVAS, PANNIYANKARA AMSOM
DESOM, KOZHIKODE TALUK.

8. OLIYATH VAZHAYIL ABDUL KAREEM,
AGED 61 YEARS, S/O.T.C.IBRAHIM, O.V.HOUSE,
O.V. ROAD, THALASSERY TALUK, THALASSERY AMSOM
VADIKAKOM DESOM, KANNUR DISTRICT.

9. ABDUL RASHEED, AGED 48 YEARS,
S/O. PALAKANDI ABDUL MAJEED, KALOOR DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

10. ACHRATH PARAKKAT MALIKAPURAYIL MUSTHAFA,
AGED 47 YEARS, S/O. P.ABOOBACKER, NO.28,
SKYLINE MEADOWS, NEDUNGOTTUR AMSOM, DESOM,
KOZHIKODE TALUK.

11. PONNAMBATH PANDIKASALA RIYAZ AHAMMED,
AGED 42 YEARS, S/O. O.V. ABOOBACKER, "RAZA",
MAYYAZHI COMMUNE DESOM, PONDICHERRY.

12. KATTUNGAL MURALEEDHARAN, S/O.APPOOTTY,
AGED 49 YEARS, "MITHILA", KOZHIKODE TALUK,
VALAYANAD AMSOM, DESOM, KOZHIKODE DISTRICT.

BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR
SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.
SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SRI.K.SANEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF PLAINT IN OS 391/05 OF SUB COURT, KOZHIKODE

EXT.P2: COPY OF PLAINT IN OS 65/05

EXT.P3: COPY OF IMPLEADING APPLICATION

EXT.P4: COPY OF COUNTER FILED BY RESPONDENTS 1 AND 2

EXT.P5: COPY OF ORDER OF SUB COURT, KOZHIKODE DT.4/3/06 IN IA 5234/05 IN OS 65/05

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 15050 OF 2006

Dated 10th January 2007

J U D G M E N T

Respondents 1 and 2 filed O.S.65/2005 before Sub court, Kozhikod seeking a decree for permanent prohibitory injunction. Petitioners filed I.A.5234/05, to get themselves impleaded in the suit contending that they have got a right over the property. Under Ext.P5 order it was dismissed. This petition is filed under Article 227 of Constitution of India challenging Ext.P5 order.

2. Arguments of learned counsel appearing for petitioner was that in respect of the suit property in O.S.65/05 and other properties, O.S.391/05 was filed for partition by petitioner before Sub court, Kozhikod and it is pending trial and husband of first petitioner and third respondent, who are brother and sister have equal right over the property and third respondent inducted 12th respondent in possession of the property and now the property is in the possession of 12th respondent and if the petitioners

are not impleaded in the suit, there is a likely hood of settlement by plaintiffs and 12th respondent and in such circumstances, learned Sub Judge should have impleaded petitioners as additional defendants.

3. Learned counsel appearing for respondents 1 and 2 argued that petitioners have absolutely no legal right over plaint schedule property and they are not necessary parties in O.S.65/2005 and in such circumstances, there is no reason to interfere with Ext.P5 order.

4. O.S.65/05 is a suit for injunction. So long as petitioners are not parties to that suit, the decree that may be passed in the suit, whether on merit or settlement between the plaintiffs and 12th respondent as apprehended by petitioner, will not affect the right of petitioners, if any. Question whether petitioners have right over the plaint schedule property, which is disputed by respondents 1 and 2, is to be settled in O.S.391/05 which is pending before Sub court, Kozhikod. In such circumstances, there is no necessity to allow petitioners to get themselves impleaded in O.S.65/05. It is more when respondents 1 and 2, the masters of the

plaint do no want their presence or do not seek a decree for injunction against petitioners.

Writ petition is dismissed. It is made clear that any observation in Ext.P5 order or the judgment will not affect the right of plaintiffs, if any, in O.S.391/05.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.